

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>LLOYD SERVAES</b>	)	
Claimant	)	
VS.	)	
	)	Docket No. 233,843
<b>BROYLES, INC.</b>	)	
Respondent	)	
AND	)	
	)	
<b>HARTFORD ACCIDENT &amp; INDEMNITY</b>	)	
Insurance Carrier	)	

**ORDER**

Respondent appeals the February 3, 2003 Award of Administrative Law Judge Bryce D. Benedict. Claimant was awarded interest pursuant to K.S.A. 44-512b (Furse 1993) for injuries suffered on October 4, 1996. Respondent disputes that interest is due, alleging that there were uncertainties regarding the functional impairment to which claimant would be entitled, at least until the deposition of C. Reiff Brown, M.D., taken January 14, 2003. Claimant contends that there was no dispute that claimant was entitled to a \$50,000 award pursuant to K.S.A. 44-510f(a)(4) (Furse 1993) and, therefore, interest is appropriate. The Workers Compensation Board (Board) held oral argument on July 18, 2003. Gary M. Peterson participated in this matter as Workers Compensation Appeals Board Member Pro Tem.

**APPEARANCES**

Claimant appeared by his attorney, Lawrence M. Gurney of Wichita, Kansas. Respondent and its insurance carrier appeared by their attorney, Richard J. Liby of Wichita, Kansas.

**RECORD AND STIPULATIONS**

The Board has considered the record and adopts the stipulations contained in the Award of the Administrative Law Judge.

**ISSUES**

Is claimant entitled to pre-award interest pursuant to K.S.A. 44-512b (Furse 1993)?

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Having reviewed the entire evidentiary record filed herein, the Board finds the Award of the Administrative Law Judge should be affirmed.

Claimant suffered accidental injury on October 4, 1996, while, as he was standing on a ladder, 14 feet off the ground, he sustained an electrical shock, which caused him to fall from the ladder. He landed on his buttocks, lacerating severely both his buttocks and his rectal area. Claimant had severe bleeding and was transported to the emergency room.

Claimant underwent treatment with numerous health care providers. He was examined by orthopedic surgeon C. Reiff Brown, M.D., on August 31, 1998. At that time, Dr. Brown found that claimant had suffered injuries to his coccyx, buttock and perirectal soft tissue area, resulting in a 19 percent impairment to the body as a whole pursuant to the American Medical Ass'n, *Guides to the Evaluation of Permanent Impairment*. Dr. Brown did not specify which version of the *Guides* was used, but refers to table IV, page 243 of the *Guides*, which would be the Fourth Edition.

Dr. Brown expressed concern that claimant experienced symptoms of ongoing fecal incontinence. He indicated that the operative note after claimant's surgical repair of the laceration did not indicate that the lacerations extended into the rectal sphincter or into the rectum, but the symptoms experienced by claimant indicated a possible unrecognized laceration of the internal sphincter, which he said is very difficult to identify. Dr. Brown recommended claimant be reassessed either by a proctologist or a colorectal surgeon. Claimant did ultimately undergo another surgical repair with a Dr. Porter, identified as a sphincteroplasty. However, Dr. Porter's medical reports are not contained in this record.

Claimant was evaluated by William A. Dodson, M.D., who assessed claimant a 38 percent impairment to the body as a whole pursuant to the AMA *Guides* (4th ed.), including a 24 percent impairment to the body for the surgical repairs to the bowel with resulting leakage and disturbance of bowel function, a 9 percent whole person impairment for the sexual dysfunction and a 10 percent impairment for the perianal and perianal skin irritation, all of which combine for a 38 percent whole person impairment.

Claimant was again seen by Dr. Brown on February 5, 2002, at which time Dr. Brown, in his report of that date, agreed with the 38 percent whole body functional

impairment rating of Dr. Dodson. Dr. Dodson's rating provided no functional impairment for claimant's lumbar complaints.

Dr. Brown issued another letter on May 16, 2002, wherein he again adopted Dr. Dodson's 38 percent impairment, describing the 24 percent impairment based upon the colorectal impairment, on which he, in essence, deferred to Dr. Dodson's opinion. However, he went on to state that claimant also had a 10 percent impairment and a 9 percent impairment for additional problems not covered by Dr. Dodson's 24 percent. In all, they combined for a 38 percent impairment to the body as a whole. This letter, which was sent to respondent's attorney, leaves no doubt that claimant's impairment, at least in Dr. Brown's and Dr. Dodson's opinions, is 38 percent to the body as a whole.

Claimant was examined at his attorney's request on November 16, 1999, by Pedro A. Murati, M.D., board certified in physical medicine and rehabilitation. Dr. Murati assessed claimant a 24 percent impairment for the injuries suffered on October 4, 1996. The impairment rating was pursuant to the *AMA Guides* (4th ed.). Dr. Murati again examined claimant on August 7, 2001, at which time he opined claimant's impairment had increased. He likewise agreed with Dr. Dodson's impairment rating of 38 percent to the body as a whole. However, Dr. Murati also assessed claimant an additional 10 percent impairment under DRE lumbosacral category III for claimant's low back complaints. All combined, Dr. Murati assessed claimant a 44 percent impairment to the body as a whole.

K.S.A. 44-512b(a) (Furse 1993) states as follows:

Whenever the administrative law judge or board finds, upon a hearing conducted pursuant to K.S.A. 44-523 and amendments thereto or upon review or appeal of an award entered in such a hearing, that there was not just cause or excuse for the failure of the employer or insurance carrier to pay, prior to an award, the compensation claimed to the person entitled thereto, the employee shall be entitled to interest on the amount of the disability compensation found to be due and unpaid at the rate of interest prescribed pursuant to subsection (e)(1) of K.S.A. 16-204 and amendments thereto. Such interest shall be assessed against the employer or insurance carrier liable for the compensation and shall accrue from the date such compensation was due.

The Administrative Law Judge assessed interest as of February 5, 2002, that being the first date that Dr. Brown acknowledged that Dr. Dodson's 38 percent impairment was appropriate. It is noted Dr. Brown assessed no impairment for claimant's low back complaints. Therefore, respondent's argument that claimant suffered some type of subsequent aggravation is not supported by the record. Dr. Brown further clarified his position on May 16, 2002, in his letter to respondent's attorney, where he again discussed and adopted Dr. Dodson's 38 percent impairment to the body as a whole. The only other

impairment rating in the record is that of Dr. Murati. Dr. Murati, in his August 7, 2001 report, adopted Dr. Dodson's 38 percent impairment to the body as a whole, but added an additional 10 percent for claimant's lumbosacral complaints. While respondent does have a legitimate argument that the 10 percent assessed by Dr. Murati is in contention, there is no evidence in the record to dispute the 38 percent impairment assessed by Dr. Dodson, adopted by Dr. Brown and adopted by Dr. Murati. It is clear from the record that, as of February 5, 2002, the medical experts unanimously believed that claimant's impairment, at a minimum, was 38 percent.

K.S.A. 44-510f(a)(4) (Furse 1993) awards a maximum of \$50,000 for permanent partial disability where functional impairment only is awarded. As claimant's allegations in this matter did not include a work disability, but are limited to a functional impairment, the \$50,000 limit would apply. As noted in claimant's attorney's argument, claimant's \$50,000 maximum is reached with a functional impairment below 38 percent, therefore, the 38 percent guarantees, under K.S.A. 44-510f (Furse 1993), that claimant would be awarded \$50,000 in this matter.

The Board finds that as of February 5, 2002, there was no dispute as to claimant's minimum functional impairment and there was no doubt, based upon this record, that claimant was entitled to a functional award of \$50,000. Therefore, there was no just cause or excuse for respondent's failure to pay, prior to the Award, the compensation in the amount of \$50,000 due and owing to claimant. The Board finds that interest, as prescribed pursuant to K.S.A. 16-204 and amendments thereto, shall be assessed against the employer and its insurance carrier as of February 5, 2002, and continuing until the payment of this Award, which the parties stipulated occurred on April 2, 2003.

The Board, therefore, affirms the Award of the Administrative Law Judge granting claimant interest, with the interest commencing February 5, 2002.

### **AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge Bryce D. Benedict dated February 3, 2003, awarding claimant interest pursuant to K.S.A. 44-512b (Furse 1993) for the injuries suffered on October 4, 1996, should be, and is hereby, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of August 2003.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c:     Lawrence M. Gurney, Attorney for Claimant  
       Richard J. Liby, Attorney for Respondent  
       Bryce D. Benedict, Administrative Law Judge  
       Paula S. Greathouse, Director